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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

In re M.W., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.W.,

Defendant and Appellant.

A138331

(Contra Costa County  
Super. Ct. No. J13-00073)

**I.**

**INTRODUCTION**

Appellant M.W., a minor, appeals from a dispositional order after the juvenile court found that he came within the provisions of Welfare and Institutions Code section 602. Appellant claims on appeal that: (1) the jurisdictional finding of the juvenile court as to the hit and run charge was not supported by substantial evidence; (2) the true finding that appellant had committed a hit and run offense must be reversed because of the erroneous exclusion of evidence at the jurisdictional hearing; and (3) the maximum period of confinement must be reduced to conform to Penal Code section 654. We disagree with the first two contentions, but agree with the third. Therefore, we remand with directions that the juvenile court reduce appellant's maximum period of confinement from four years four months, to three years four months. Otherwise, we affirm the judgment.

## II. PROCEDURAL BACKGROUND

On February 14, 2013, an amended Welfare and Institutions Code section 602 petition was filed in Contra Costa County alleging that on December 14, 2012, appellant committed one felony count of driving a motor vehicle without the owner's permission (Veh. Code, § 10851, subd. (a)—count 1), and one felony count of leaving the scene of an injury accident (Veh. Code § 20001, subd. (a)—count 2). The amended petition also alleged that on December 14, 2012, appellant committed second degree vehicular burglary (Pen. Code, §§ 459, 460, subd. (b)—count 3), and grand theft of a firearm (Pen. Code, § 487, subd. (d)—count 4). Appellant appeared on February 15, 2013, and denied the allegations of the amended petition. He was ordered detained at juvenile hall by the court.

Thereafter, a contested jurisdictional hearing was held over three days, March 1, 4, and 6, 2013. At the conclusion of the hearing, the juvenile court found true the allegations contained in counts 2, 3, and 4. The court found count 1 not true. The matter was continued to March 18, 2013, for a dispositional hearing.

Prior to the dispositional hearing, the county probation department issued its report and recommendation to the court. It recommended that appellant be adjudged a ward of the court with no termination date, removed from the home where he was residing, and placed at the Orin Allen Youth Rehabilitation Facility (Orin Hatch) for nine months, to be followed by a 90-day conditional release/parole period. The report indicated that appellant's maximum period of confinement was four years four months. After hearing counsel's argument, the juvenile court observed that while it initially was inclined to impose a "higher recommendation," it decided to follow the recommendations contained in the probation report "to the letter." Therefore, appellant was adjudged a ward of the court with no termination date, removed from the home where he was residing, and placed at Orin Hatch for nine months, to be followed by a 90-day period of conditional release/parole. Conditions of probation were set forth on the record. The court announced that appellant's maximum period of confinement was four years four months.

A notice of appeal was timely filed by on April 8, 2013.

### III.

#### ANALYSIS

##### **A. Substantial Evidence Supports the True Finding that Appellant Committed Hit and Run (Veh. Code, § 20001, subd. (a))**

Appellant's principal contention on appeal is that the juvenile court's finding that he committed the crime of leaving the scene of an injury accident (Veh. Code, § 20001, subd. (a)) (hit and run) was not supported by substantial evidence. "In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. . . . Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]" (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; accord, *In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) With this standard of review in mind, we recount the evidence that was adduced at the jurisdictional hearing pertaining to the hit and run charge.<sup>1</sup>

Tiffany Lintz testified concerning the December 14, 2012. incident. She knew appellant from the El Pueblo housing project in Pittsburg. While she knew him from the neighborhood, Ms. Lintz did not know where appellant actually lived.

On that day, Ms. Lintz was "hanging out" at her home with appellant, her nephew, and her boyfriend, Garnett Pittman, when they went to the store in a Jeep. Appellant was driving the Jeep with Mr. Pittman in the front passenger's seat. Ms. Lintz was in the back seat with her nephew.

Although she did not recall the details, on the way back from the store, the Jeep crashed. After the crash Ms. Lintz blacked out. She did not regain consciousness until

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<sup>1</sup> Appellant does not challenge the true findings as to counts 3 and 4, the second degree burglary and firearm theft charges. Therefore, we intentionally omit a narrative of the evidence adduced at the jurisdictional hearing relating to these counts.

she was almost home. When she awoke she was far from the site of the crash. She was walking with her nephew, but she did not remember the whereabouts of the other two occupants of the Jeep. She lived about a block from the accident scene. Someone called an ambulance, which came and picked up Ms. Lintz at her home and took her to the hospital. The ambulance was already at her home when she got there. Her injuries included a cut on her leg that required stitches and a slight concussion. She did not see appellant after the crash that evening.

Appellant had lived with Rena T. for about two years. Ms. T. was originally his neighbor, but he moved in with her after his mother passed away. At the time of the accident Ms. T. was in the process of becoming appellant's legal guardian. She testified that the car crash occurred in the middle of the night. She first became aware of it when appellant told her when he got home that he had been in a car accident. He asked Ms. T. if she would go back with him, but she did not. She was confused. After he told her this, appellant left the house.

Natasha Smith, Ms. T.'s best friend, testified that in December 2012 she owned a 1997 Jeep Grand Cherokee. Ms. Smith knew appellant because her daughter and appellant grew up together. On the day of the accident she gave appellant the keys to her Jeep, and asked him to help a friend move his belongings out of an apartment he was vacating. The apartment was just around the corner.

Appellant did not return the car that day. Ms. Smith fell asleep at Ms. T.'s house, and she slept for about an hour, and then woke up and started looking for her car. Later, appellant woke her up around 1:00 a.m., and told her he was sorry but that he had just totaled her car down the street. Ms. Smith then went to the accident scene and confirmed that her car had been totaled. It looked like a "sardine can." While appellant had permission to use her car to help her friend, he did not have permission to use it to joyride with his friends.

Nicole Riddick had been a police officer with the City of Pittsburg for over three years. She was dispatched to the scene of an accident on the night of December 14, 2012, arriving there approximately three minutes after receiving the dispatch call. Upon arrival

she saw the Jeep in the road near two cars which were in a driveway. Both of the cars in the driveway had sustained major damage. The adjacent shrubbery was damaged and the front windows of the home were broken. The Jeep had sustained major damage to both its front and rear, and the tires were flat. No one was around.

Pittsburg Police Officer Chunliam Saechao was also dispatched to the accident scene on the night of December 14, 2012. He went to 88 Hermosa Avenue to interview Ms. Lintz, and then to 827 Deltran Avenue to speak to Ms. Smith and to appellant. He read appellant his rights under *Miranda* before interviewing him. Appellant admitted to Officer Saechao that he “stole” the Jeep. He also admitted that his friends were in the Jeep with him when he was driving about 75 miles per hour on School Street. He lost control and crashed into two parked cars. He then walked to the Treatro area with the passengers where he parted with them, and then walked to the Deltran Avenue address.

The presentation of evidence was completed on March 4, 2013. On March 6, after hearing counsel’s arguments, the juvenile court announced that it was not convinced beyond a reasonable doubt that appellant had driven the Jeep without its owner’s permission. However, as to the hit and run count, the court found that the prosecution had met its burden of proof “absolutely.” The court also found that counts three and four, not directly relevant to this appeal, were also proven.

Vehicle Code section 20001, subdivision (a) provides: “The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.”

Appellant does not contest that he was involved in an accident and a person was injured. Therefore, the real issue here is whether there is substantial evidence that appellant did not “fulfill the requirements of Sections 20003 and 20004.”

Vehicle Code section 20003, subdivision (a) mandates the following: “The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver’s vehicle injured in the accident, the registration

number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person.<sup>[2]</sup>”

The basic purpose of the statute is to “prohibit negligent or wanton drivers from seeking to evade civil or criminal prosecution by escape before their identity can be established, and similarly to prohibit all drivers, whether negligent or not, from leaving persons injured in collisions with cars driven by them, in distress and danger for want of proper medical treatment. [citations.]” (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 311, p. 1056; *People v. Capetillo* (1990) 220 Cal.App.3d 211, 218.)

Substantial evidence can be found in the record that appellant failed to “render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary,” as required by Vehicle Code section 20003, subdivision (a). Ms. Lintz was rendered unconscious, or semiconscious by the impact, had a laceration on her leg that required medical treatment, and needed some assistance in walking. It is clear from these circumstances that Ms. Lintz required assistance after the accident. There is no evidence that appellant provided any assistance to her after the crash.

Ms. Lintz testified that after the crash she blacked out, and did not regain consciousness until her nephew had walked her most of the way to her house and to a

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<sup>2</sup> Subdivision (b) of Vehicle Code section 20003 also requires that the person causing such an accident show the injured person or responding law enforcement officers his or her driver’s license “upon being requested.” There is no contention by respondent that appellant violated this particular subdivision.

waiting ambulance. While appellant may have accompanied Ms. Lintz and her nephew some distance after the accident, he left them at the “Treatro area.” Appellant then continued home alone.<sup>3</sup> Appellant had no further contact with Ms. Lintz after the crash.

Appellant speculates that: (1) he may have assisted Ms. Lintz, or reasonably concluded that she was safe in the company of her adult nephew, (2) his decision to return home and to report the accident to the Jeep’s owner rather than staying with Ms. Lintz, satisfied his statutory duty, and (3) the fact that an ambulance was waiting for Ms. Lintz supports at least an inference that it was appellant who called for the emergency medical help, or that another companion did so in his presence making it unnecessary for appellant to do so.

Contrary to appellant’s assertions, the trial court concluded that appellant simply “walked away” from the accident, and thereby abdicated his responsibility to assist his injured passenger. As we have noted already, where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for the reasonable inference found by the trier of fact. (*In re Katrina C.*, *supra*, 201 Cal.App.3d at p. 547; accord, *In re David H.*, *supra*, 165 Cal.App.4th at p. 1633.) The juvenile court’s conclusion is supported by reasonable inferences from the evidence.

First, while one reasonable inference may be that appellant left Ms. Lintz in the care of her nephew believing her to be in good hands, a competing inference is that appellant left her while she was still unconscious, and at a point where he could not reasonably conclude whether or not she was seriously hurt. The probability Ms. Lintz sustained serious injuries is strengthened by evidence of the extensive damage to the Jeep, the two parked cars appellant hit, and the adjoining residence whose windows were blown out by the force of the impact with the two parked vehicles. This evidence similarly supports the inference that, rather than try to help Ms. Lintz, who from all of the

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<sup>3</sup> The record is devoid of any evidence as to what Ms. Lintz’s boyfriend, Mr. Pittman, did after the crash.

circumstances was obviously injured, appellant simply left her shortly after the accident without rendering the assistance required by law.

Another competing reasonable inference is that it was Ms. Lintz's nephew, the only person who actually provided assistance to her, who summoned medical help; not appellant. Also, undercutting appellant's argument that he discharged his statutory duty to render "reasonable assistance" to Ms. Lintz, by immediately informing the Jeep's owner of the accident, the record shows that appellant simply informed Ms. Smith that he had "totaled her car," but without saying a word about Ms. Lintz being injured.<sup>4</sup>

Therefore, applying the required deferential standard of review, we conclude there was substantial evidence to support the juvenile court's finding that appellant violated Vehicle Code section 20001, subdivision (a).<sup>5</sup>

**B. The Trial Court Did Not Commit Prejudicial Error in Excluding Appellant's Statement to Investigating Officers that He Lived at 827 Deltran Avenue with Ms. T.**

During Officer Saecho's cross examination, he was asked if appellant told him that he lived with Ms. T. at 827 Deltran Avenue. The trial court sustained the prosecutor's objection to the question on the ground that it called for hearsay evidence. Appellant contends that the trial court erred in excluding this evidence because the excluded evidence was not offered for the truth of the matter stated. (Evid. Code, § 1200, subd. (a).) He argues that this error was prejudicial because the excluded evidence "show[ed] that he cooperated with the accident reporting process and did not attempt to evade any prospective civil liability by concealing his address."

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<sup>4</sup> Also supporting an inference that appellant failed to render assistance because of indifference to the injured passenger, or to avoid responsibility for the accident, is evidence that appellant had no contact with Ms. Lintz for several days after the accident.

<sup>5</sup> Because we affirm the true finding on this basis, we need not, and do not, decide whether appellant had a duty under Vehicle Code section 20003, subdivision (a) also to give his current residence address to the occupants of *his own* vehicle; an issue not directly addressed by the parties in their respective briefs on appeal.

Given the suggested relevance of this evidence, we agree with respondent that the evidence was offered to prove the truth of the matter stated; that is, that appellant was being honest with the officer and told him truthfully where he actually lived. Therefore, the utterance itself is not relevant for any purpose other than to prove that it was factually true, and the implication from that true statement that appellant was acting in conformance with his statutory duties as enumerated above. Having been offered for the truth of the statement made to law enforcement, it was inadmissible hearsay. (See *People v. Garcia* (2008) 168 Cal.App.4th 261, 289.)

Furthermore, we reject appellant's contention that the true statement about where he lived supported appellant's defense that he was cooperative with law enforcement, and thus was not trying to avoid responsibility by abruptly leaving the accident scene and Ms. Lintz. We note that appellant was being interviewed at Ms. T.'s residence at 827 Deltran Avenue when he made the statement to Officer Saecho. Under this circumstance, the fact that appellant admitted the obvious—that he actually lived where he was found—is hardly supportive of the inference and implication now urged for the admission of the statement by appellant.

Even if the juvenile court erred in excluding the evidence, it was harmless error under the *Watson* standard.<sup>6</sup> (*People v. Anderson* (2012) 208 Cal.App.4th 851, 886-887.) Appellant argues the statement was probative to show that appellant was cooperative with investigating officers and was not attempting to evade either criminal or civil responsibility for the accident. However, the issue of whether appellant violated Vehicle Code section 20001, subdivision (a) turned on whether he rendered assistance to an injured passenger, as required by Vehicle Code section 20003, subdivision (a). Stating his residence address to police who interviewed him at that very address after the accident has very little, if any, probative value as to whether appellant rendered assistance to Ms. Lintz under section 20003, subdivision (a). Accordingly, it is not

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<sup>6</sup> *People v. Watson* (1956) 46 Cal.2d 818, 836.

reasonably probable that admission of appellant's statement would have resulted in a more favorable verdict. (*People v. Watson, supra*, 46 Cal.2d at p. 836.)

**C. The Maximum Period of Confinement Was Erroneously Fixed at Four Years Four Months**

Appellant's last contention is that, assuming the juvenile court's jurisdictional finding that he violated Vehicle Code section 20001, subdivision (a) is supported by substantial evidence, then the trial court erred at the dispositional hearing in announcing that his maximum period of confinement was four years four months. He points out that, in addition to the true finding on the hit and run count, the court also found true the allegations that he committed both burglary and theft in connection with the allegations in the amended petition. However, under Penal Code section 654, appellant could not have been sentenced as an adult for both crimes as they arose out of the same transaction and shared a common objective and intent. (*People v. Jaramillo* (1962) 208 Cal.App.2d 620, 628.)

The maximum period of confinement for either the burglary or theft counts is three years. (Pen. Code, §§ 461, subd. (b), 489, subd. (a).) Because the hit and run did not result in "permanent, serious injury," the maximum period of confinement for count one is one year. (Veh. Code, § 20001, subd. (b)(1), (2), (d).) The Attorney General concedes that appellant could not have been sentenced as an adult for both the burglary and theft counts. Therefore, selecting either the burglary or the theft count as the principal term (three years), and adding to it a consecutive sentence of one-third the midterm for the hit and run finding (four months), the correct maximum period of

confinement here was three years four months, and not the four years four months announced by the trial court.<sup>7</sup>

#### **IV.**

#### **DISPOSITION**

The case is remanded to the juvenile court with directions to vacate its finding that the maximum period of confinement is four years four months, and to enter a new finding that appellant's maximum period of confinement is three years four months. The judgment arising from the jurisdictional finding and disposition is otherwise affirmed.

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RUVOLO, P. J.

We concur:

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RIVERA, J.

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HUMES, J.

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<sup>7</sup> Appellant's opening brief on appeal claims that the maximum period of confinement is three years eight months. We agree with the Attorney General that the correct aggregate period of confinement is three years four months, as we explain above. We note also that the juvenile court's announcement of the maximum period of confinement followed the probation department's report, which concluded that the maximum period of confinement was four years four months. It appears that this aggregate period included a consecutive period of one year, which is one-third the midterm of three years (aggravated term) for count one, the violation of Vehicle Code section 10851, subdivision (a), which was found not true at the conclusion of the jurisdictional hearing.